

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

University of Southern California	)	Opposition No.: 125,615
	)	
Opposer,	)	Serial No.: 75/358,031
	)	
vs.	)	Mark: "SC" (Stylized)
	)	
University of South Carolina,	)	
	)	
Applicant.	)	
	)	
<hr/>		
University of South Carolina	)	Opposition No.: 125,615
	)	
Petitioner,	)	Reg. No.: 1,844,953
	)	
vs.	)	Mark: SC Word Mark
	)	
University of Southern California	)	
	)	
Registrant.	)	
	)	

**APPLICANT AND PETITIONER'S RESPONSE TO OPPOSER AND CROSS-RESPONDENT'S REPLY**

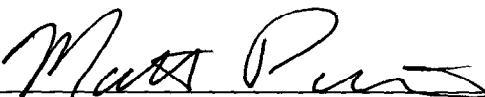
The Applicant and Petitioner University of South Carolina ("Carolina") submits this memorandum and Exhibit to address one narrow procedural argument raised in Opposer and Cross-Respondent University of Southern California's ("California") most recent submission. Specifically, California has alleged in a footnote that the Exhibits submitted by Carolina with its Response to California's Motion for Summary Judgment may not be considered in the summary judgment context because Carolina submitted no declaration or other form of authentication for each Exhibit as allegedly required under Rule 56. **Opposer's Reply, p.1, fn. 1.** Regardless of any assertions by California, the majority of these Exhibits have distinct

indicia of reliability by and through the web addresses which appear on them. Further, it is difficult to dispute that each of these Exhibits is of the type and character to be admissible as evidence at the trial of this matter. Regardless, it is within the T.T.A.B.'s discretion whether to consider these materials without any further authentication. It is clear that there are a variety of materials not expressly mentioned in Rule 56 that a court may consider in its determination of a summary judgment motion. See Vol. 10A, WRIGHT & MILLER, Federal Practice and Procedure, "Summary Judgment Proceedings", § 2724. However, in an effort to simplify the situation, Carolina is submitting herewith as Exhibit 1 an affidavit of Thad H. Westbrook, Esq. to provide an ample basis for the consideration of these materials by the T.T.A.B. The affidavit should rectify any dispute over whether the Exhibits attached to Carolina's Response may be considered by the T.T.A.B.

In addition to its argument regarding the certification of Carolina's Exhibits, California made an allegation that printed materials submitted by Carolina should not be considered because no notice of reliance was submitted pursuant to 37 C.F.R. § 2.122(e). **Opposer's Reply, p.1, fn. 1.** However, the explicit terms of 2.122(e) provide that, "[t]he notice of reliance shall be filed *during the testimony period* of the party that files the notice." [Emphasis added]. This case is not in the testimony phase thus the requirement for a Notice of Reliance has not yet ripened and California's argument is simply incorrect.

California has obviously realized that the evidence submitted by Carolina is substantial enough to defeat its motion for summary judgment and it has attempted to rely upon hypertechnical arguments in an effort to salvage its chances for success. However, the point of a summary judgment motion is to efficiently dispose of cases where no factual dispute exists. Where, as here, clear factual disputes exist, a motion for summary judgment should be denied.

NELSON MULLINS RILEY & SCARBOROUGH, L.L.P.

By: 

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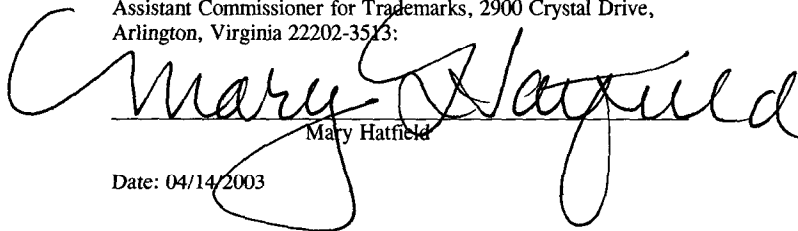
Attorneys for the University of South Carolina

Charleston, South Carolina

4/14, 2003

Certificate of Mailing

I hereby certify that this correspondence is being deposited with  
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Arlington, Virginia 22202-3513:

  
Mary Hatfield

Date: 04/14/2003

## CERTIFICATE OF SERVICE

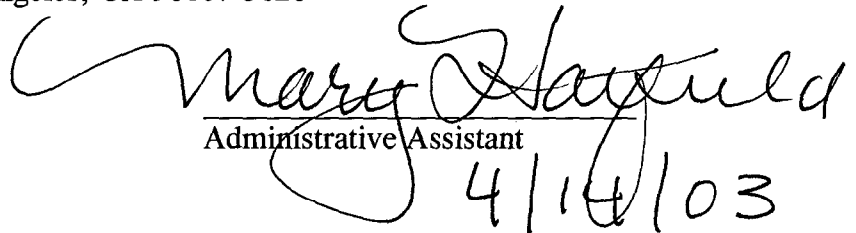
I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough, L.L.P., attorneys for Applicant do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Postal Service First Class Mail, with proper postage thereon, to the following address(es):

Pleadings:

**APPLICANT AND PETITIONER'S RESPONSE TO OPPOSER  
AND CROSS-RESPONDENT'S REPLY**

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Michael S. Adler  
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Los Angeles, CA 90067-3026

  
Administrative Assistant  
4/14/03

# **Exhibit A**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
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University of Southern California	)	Opposition No.: 125,615
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**AFFIDAVIT OF THAD H. WESTBROOK IN SUPPORT OF APPLICANT AND  
PETITIONER'S RESPONSE TO MOTION FOR SUMMARY JUDGMENT**

1. I am over eighteen (18) years of age and of sound mind. The following statement is true and correct to the best of my personal knowledge and belief.

2. I am an attorney with the law firm of Nelson Mullins Riley & Scarborough, L.L.P., counsel of record for the Applicant and Petitioner University of South Carolina ("Carolina") in the above-captioned matter. I am submitting this affidavit pursuant to Federal Rule of Civil Procedure 56(e).

3. In assisting with the preparation of a response to the University of Southern California's Motion for Summary Judgment, I ran a LexisNexis search which

demonstrated the use of the terms "SC" and "South Carolina" used closely together in more than 3,000 articles. The results of this search are represented by the document labeled as Exhibit 1 and submitted with Carolina's Response to the Motion for Summary judgment filed on March 12, 2003.

4. I also ran numerous internet searches for various uses of the letters "SC". The results of those searches are included as Exhibits 3 through 12, Exhibit 15, and Exhibit 17 submitted with Carolina's Response to the Motion for Summary judgment filed on March 12, 2003. Specifically, those searches revealed:

- Use of "SC" as the official state web address [www.state.sc.us](http://www.state.sc.us), which links to the official state website, [www.mySCgov.com](http://www.mySCgov.com). (Exhibit 3).
- Use of "SC" adopted by the South Carolina Department of Health and Environmental Control. (Exhibit 4).
- Multiple uses of "SC" as insignia on historical aircraft maintained by the South Carolina Air National Guard. (Exhibit 5).
- Multiple uses of "SC" as an abbreviation for South Carolina adopted by the South Carolina Information Highway. (Exhibit 6).
- Use of "SC" adopted by the South Carolina Department of Revenue. (Exhibit 7).
- Prominent use of the letters "SC" in the "TEAM SC" logo adopted by the South Carolina Department of Commerce. (Exhibit 8).
- Document from the South Carolina Historical Marker Program demonstrating that since 1936, the letters "SC" were used on official markers around the state of South Carolina. (Exhibit 9).

- Document from the U.S. Postal Service indicating that "SC" is the official postal abbreviation for the state of South Carolina. (Exhibit 10).
- Document illustrating that the South Carolina Department of Public Safety has adopted the letters "SC" as part of its insignia. (Exhibit 11).
- Collection of maps indicating that "SC" is used as the geographical abbreviation for the state of South Carolina. (Exhibit 12).
- Various photocopies of military belt plates used in the mid-1800's which establish use of the letters "SC" as insignia by the State of South Carolina. (Exhibit 15).
- Photocopy of "rattlesnake" secessionist flag created at the beginning of the Civil War with use of "SC" as insignia for the State of South Carolina. (Exhibit 17).

5. In addition to the above-mentioned internet searches, I oversaw the procurement of multiple photographs from several different museums and archives in the state capital of Columbia, South Carolina. Several of those pictures were submitted as Exhibit 16 and can be described as follows:

- Collection of photographs taken from the South Carolina Museum and South Carolina Confederate Relic Room & Museum establishing various uses of the letters "SC" on battle flags, weaponry, and uniforms during the Revolutionary War, the Civil War and the Spanish-American War. (Exhibit 16).

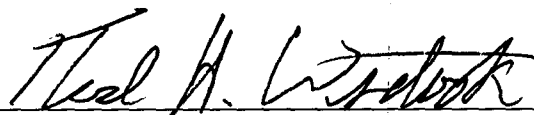
6. Additionally, through my research, I discovered pictures of the letters "SC" in various publications including Plates and Buckles of the American Military, by Sydney Kerksis and Arms and Equipment of the Confederacy by the Editors of Time Life Books. Excerpts from those publications were submitted as Exhibits 13 and 14 with Carolina's



Response to the Motion for Summary judgment filed on March 12, 2003 and can be described as follows:


- A photocopy of a waist belt plate created in approximately 1840 with the interlocking letters "SC" used to refer to South Carolina. (Exhibit 13).
- A photocopy of various state seals used by South Carolina throughout its history incorporating the letters "SC." (Exhibit 14).

FURTHER AFFIANT SAYETH NOT.



Thad H. Westbrook, Esq.  
Nelson Mullins Riley & Scarborough, L.L.P.

SWORN to and subscribed before me  
this 10<sup>th</sup> day of April, 2003



(L.S.)  
Notary Public for South Carolina  
My Commission Expires: 10/23/12

TTAB

LAW OFFICES

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April 14, 2003

04-16-2003

U.S. Patent & TMO/TM Mail Rcpt Dt. #71

**BOX TTAB**

**NO FEE**

Assistant Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

RE: University of Southern California v. University of South Carolina  
Our File No.: 13524/01501

Dear Assistant Commissioner:

Please find enclosed the **Applicant and Petitioner's Response to Opposer and Cross-Respondent's Reply** in the above-referenced matter. By copy of this letter we are serving the opposing counsel.

Thank you for your assistance in this matter.

Very truly yours,



Matthew D. Patterson

Enclosures

cc: Scott A. Edelman  
Michael S. Adler